(2)

No. 96-838

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

LOUIS M. WALLER,

Petitioner,

v.

KENTUCKY BAR ASSOCIATION,

Respondent.

On Petition For Writ Of Certiorari To The Kentucky Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether an attorney's due process rights were denied when no evidentiary hearing was held, where no facts were disputed, where the attorney admitted the conduct which occasioned the charge, and only questions of law were presented?

2. Does the First Amendment to the United States constitution protect an attorney from criticizing a judge personally when such comment undermines the public confidence in the judicial system?

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CITATION OF THE OPINION DELIVERED BY THE COURTS BELOW

The opinion of the Supreme Court of Kentucky is *Kentucky Bar Association v. Louis M. Waller*, Ky., 929 S.W.2d 181 (1996). See Petition for Writ of Certiorari, Appendix "A", pages 24-29.

STATEMENT OF THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT IS SOUGHT TO BE INVOKED

Statutory provision conferring on the Supreme Court jurisdiction to review the judgment of the Supreme Court of Kentucky:

28 U.S.C. section 1257(a).

CONSTITUTIONAL PROVISIONS AND REGULATIONS

FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

KENTUCKY SUPREME COURT RULE 3.130:

Kentucky Rules of Professional Conduct Rule 8.2 Judicial and Legal Officials

(A) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

KENTUCKY SUPREME COURT RULE 3.210:

Processing Cases of Default, Pleas of Guilt or Answers Raising Only Issues of Law

(1) If no answer is filed after a Respondent is notified, or an answer is filed admitting the charge, or, the answer raises only issues of law, the Tribunal shall order the record, together with such investigative evidence as may have been obtained to be submitted to the Board. If the answer raises issues of law, the Chairman of the House shall be notified by the Tribunal and he shall appoint counsel for the Association to file a brief within twenty days thereafter. After briefs are filed, or the time within which briefs may be filed has expired, the record and briefs shall be forwarded to the President for assignment to a member of the Board for a report.

STATEMENT OF THE CASE

In June 1994, Petitioner represented a client in a civil matter in the Logan County, Kentucky Circuit Court.

After the regular judge recused himself from hearing the case and a special judge was appointed, Petitioner filed a memorandum styled as "Legal Authorities Supporting the Motion to Dismiss" which contained the following introductory language: "Comes defendant, by counsel, and respectfully moves the Honorable Court, much better than that lying incompetent ass-hole it replaced if you graduated from the eighth grade. . . . "

On April 25, 1995, the Inquiry Tribunal[1] issued a charge against Petitioner alleging that he engaged in unethical and unprofessional conduct. Specifically Petitioner was charged with one count of violating Kentucky Supreme Court Rule (SCR) 3.130-3.5(c), the Kentucky Rules of Professional Conduct, for using disparaging language intended to disrupt the court; one count of violating SCR 3.130-4.4 for using language that served no purpose and was intended to embarrass the regular circuit court judge; and one count of violating SCR 3.130-3.4(e) when he used specific language in a document filed in the court record to describe the regular circuit judge who had recused, and thus knowingly and intentionally alluded to a matter not relevant to the cause

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[1] The Inquiry Tribunal is a body appointed annually by the Chief Justice of the Kentucky Supreme Court pursuant to SCR 3.140, to dispose of complaints of lawyer misconduct. The Tribunal is composed of a former judge or justice of the Court of Justice, a former president of the Kentucky Bar Association (KBA) and a former Chair of the KBA House of Delegates. If the Inquiry Tribunal determines by a majority vote, that a charge of unprofessional conduct should be filed against an attorney, it shall prepare such charge stating the name and present or last known address of the attorney and the facts alleged to constitute unprofessional conduct.

under consideration by the Court or supported by admissible evidence.

Petitioner filed an answer to the charge, admitting that he had made the statements as charged but denied that his conduct was unethical.

The Inquiry Tribunal subsequently issued a First Amended Charge alleging that the conduct admitted violated SCR 3.130-8.2(a) for making an unfounded statement concerning the qualifications and integrity of a regular sitting judge who had recused in the particular case. Petitioner answered the First Amended Charge by again admitting that he made the statement as charged, but denying that his conduct was unethical.

Pursuant to SCR 3.210, Petitioner's answer was submitted to the Chair of the Inquiry Tribunal who determined that the answer raised only a question of law, and ordered that it be submitted directly to the Board of Governors of the Kentucky Bar Association for a determination whether the admitted conduct violated the Kentucky Rules of Professional Conduct, and if so, what sanction the Board would recommend to the Kentucky Supreme Court. Petitioner and Respondent filed briefs to the Kentucky Bar Association's Board of Governors, and neither party requested an oral argument. The Board considered the case on November 17, 1995, and thereafter issued its Opinion. The Board of Governors unanimously found Petitioner not guilty of violating SCR 3.130-3.5(c), SCR 3.130-4.4 and SCR 3.130-3.4(c). By unanimous vote, the Board determined that Petitioner's statements characterizing the Judge as a lying incompetent ass-hole violated SCR 3.130-8.2(a). The Board of Governors

recommended to the Kentucky Supreme Court that the Respondent be publicly reprimanded for his violation of SCR 3.130-8.2(a). Pursuant to precedent and rule, the Supreme Court of Kentucky is the final arbiter of the facts and law in every disciplinary case; the recommendation of the Board is advisory. *Kentucky Bar Association v. Jones*, Ky., 759 S.W.2d 61 (1988).

The entire record was filed with the Clerk of the Supreme Court of Kentucky on February 7, 1996. On April 25, 1996, the Supreme Court of Kentucky issued an order announcing its intention to review the case *de novo* and directed the Petitioner and the Respondent to file briefs. Each party filed the required brief; neither requested oral argument before the Court. On August 29, 1996, the Supreme Court of Kentucky rendered its opinion that the Petitioner was guilty of violating SCR 3.130-8.2(a), and ordered him suspended from the practice of law in the Commonwealth of Kentucky for a period of six (6) months. The Opinion of the Supreme Court of Kentucky is set forth in its entirety in the Petition for Writ of Certiorari, Appendix "A" pp. 24-29.

On September 3, 1996, Petitioner filed with the Supreme Court of Kentucky a Motion to Reconsider Opinion and Order entered August 29, 1996 and a Motion to Stay Order Pending Ruling on Motion to Reconsider. On September 26, 1996, the Supreme Court of Kentucky denied the Respondent's Motion to Reconsider the Opinion and Order and granted, in part, his Motion to Stay Order Pending the Ruling on Motion to Reconsider. This did not change the sanction, it merely stayed his suspension until September 26, 1996. A copy of Kentucky

Supreme Court Rules 3.130-8.2 and 3.140-3.380 is attached as Appendix "A".

ARGUMENT

I. WHETHER AN ATTORNEY'S DUE PROCESS RIGHTS WERE DENIED WHEN NO EVIDENTIARY HEARING WAS HELD, WHERE NO FACTS WERE DISPUTED, WHERE THE ATTORNEY ADMITTED THE CONDUCT WHICH OCCASIONED THE CHARGE, AND ONLY QUESTIONS OF LAW WERE PRESENTED

The facts of this case are clearly stated in Opinion and Order of the Supreme Court of Kentucky set forth in full in the Petition for Writ of Certiorari, Appendix (A), pages 24-29, and need not be recited here.

Petitioner asserts that he was denied his right to due process guaranteed by the Fourteenth Amendment to the United States Constitution because no evidentiary hearing was held in his disciplinary case. Respondent does not concede the application of the Fourteenth Amendment to Kentucky's lawyer disciplinary process, but will respond to the Petitioner's argument since due process, i.e. notice and an opportunity to be heard, was satisfied by these proceedings. Pursuant to SCR 3.210, the Chair of the Inquiry Tribunal reviewed the charge, the First Amended Charge, and the Petitioner's Answers to the Charge and the First Amended Charge and determined that no questions of fact were raised which would require an evidentiary hearing. In his answers, the Petitioner

admitted the factual allegations of the charge of professional misconduct. Where no facts are controverted, there is no need to hold an evidentiary hearing before the Trial Commissioner. Petitioner did not deny making the subject statements in the memorandum about the circuit judge. No facts were in dispute. The Chair of the Inquiry Tribunal was justified in finding, and compelled to find, that only legal issues were presented for decision in the case and was authorized by Rules of Kentucky Supreme Court to order the case submitted directly to the Board for determination whether the admitted conduct constituted a violation of the applicable rules of Professional Conduct. The Petitioner never contested the Chair's decision that his answer only raised an issue of law, and he never requested an evidentiary hearing or an oral argument. Petitioner therefore waived his opportunity for hearing before a Trial Commissioner.[2]

The waiver of an evidentiary hearing does not deny the respondent in a disciplinary case notice and an

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[2] Pursuant to SCR 3.210, if the answer raises only a question of law, the Chair of the Inquiry Tribunal shall order the record, together with such investigative evidence as may have been obtained to be submitted to the Board of Governors. The Chair shall notify the Chair of the KBA House of Delegates to appoint counsel for the KBA to file a brief within twenty days, and the Respondent may file a brief within twenty days thereafter. If the answer raises a question of fact, pursuant to SCR 3.230, the Chair of the Inquiry Tribunal shall notify the Chair of the House of Delegates in order that he may appoint an attorney for the KBA and a member of the House of Delegates to act as a Trial Commissioner. The Trial Commissioner shall fix the time and place for an evidentiary hearing and determine and regulate the order of proceedings at the hearing.

opportunity to be heard. Under well settled Kentucky law, an evidentiary hearing is required only if there are facts in controversy. In *Kentucky Bar Association v. Ricketts*, Ky., 599 S.W.2d 454, at 455-456 (1980), the Kentucky Supreme Court held:

> The procedure for disciplining an attorney is clear in requiring an evidentiary hearing if a respondent raises a question of fact. SCR 3.210(1). If there are only questions of law, the matter is sent by the Inquiry Tribunal to the Board of Governors. As we said, the formal answer of the respondent to the charge filed by the Inquiry Tribunal admitted the factual allegations of the charge. Further, Respondent did not request an evidentiary hearing before either the Inquiry Tribunal or the Board of Governors. Under these circumstances, and familiar principles of law, respondent had a fair hearing which satisfied the requirements of due process.

Secondly, Petitioner had an opportunity to be heard on the legal issues presented when he filed a brief to the Board of Governors and when he filed a brief to the Kentucky Supreme Court. Pursuant to SCR 3.330, a Trial Commissioner is required to find the facts established by substantial evidence, while the Board of Governors of the Kentucky Bar Association is required to conclude, as a matter of law, whether the facts established or admitted constitute a violation of the applicable standards of professional conduct. The Board of Governors then makes a recommendation of guilt or innocence and, if guilty, recommends an appropriate sanction to the Kentucky Supreme Court. When the case was presented to the Board of Governors, Petitioner filed his brief. After his

case was referred to the Kentucky Supreme Court, and the Court noticed review on its own motion, pursuant to SCR 3.370(8), Petitioner filed a brief to the Court as well. Petitioner was on notice by the Chair and First Amended Charge and was given the opportunity to explain and defend his case to the Board of Governors and to the Kentucky Supreme Court. He took full advantage of this opportunity by filing his brief, there was no denial of due process. In *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, at 654-655 (1985), this Court held:

> Appellant does not contend that he was afforded no opportunity to respond to the Board's recommendation; indeed, the Ohio rules appear to provide ample opportunity for response to Board recommendations, and it appears that Appellant availed himself of that opportunity. *The notice and opportunity to respond afforded appellant are sufficient to satisfy the demands of due process.* (Emphasis Added).

II. DOES THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION PROTECT AN ATTORNEY FROM CRITICIZING A JUDGE PERSONALLY WHEN SUCH COMMENT UNDERMINES THE PUBLIC CONFIDENCE IN THE JUDICIAL SYSTEM?

In the course of representing a client in a civil matter, Petitioner filed a pleading in open court in which he referred to the regular sitting judge, who had already recused, as a "lying, incompetent ass-hole." Petitioner argues that his statement is protected under state and federal constitutional guarantees of free speech. An attorney, both as a citizen and as an officer of the court, has a

constitutional right to criticize in properly respectful terms and through legitimate means the acts of courts and judges. A person does not forfeit his right to freedom of speech when he becomes an attorney at law and the Kentucky Bar Association through a disciplinary proceeding does not seek or desire to inhibit or restrict unduly Petitioner's exercise of his right to freedom of speech. However, this guarantee does not mean that an attorney may indulge in unfounded and offensive criticism of the judges personally. Unlike the ordinary citizen, every attorney has an added responsibility to the court for any abuse of his ethical duties as an officer of the court. He must abide by the Kentucky Rules of Professional Conduct that became effective on January 1, 1990 and are found in the Kentucky Supreme Court Rule (SCR) 3.130. SCR 3.130-8.2(a) provides that "a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or a candidate for election or appointment to judicial or legal office."

The Kentucky Supreme Court has previously balanced the interests of an attorney in the exercise of his first amendment rights with his duty to maintain respect for the judicial system. There are limits to freedom of speech. In the case of *Kentucky State Bar Association v. Lewis*, Ky., 282 S.W.2d 321, at 326 (1955), the Supreme Court of Kentucky held:

> Freedom of speech is not a license. It is a right or a privilege constitutionally guaranteed, but he who uses it as a license to degrade another does so at his peril. . . . Of course any attorney,

> as well as any other citizen, has the right to criticize the courts in their decisions but the publication of false and scurrilous matters subjects them to disciplinary action. Thatcher v. United States, 6 Cir., 212 F. 801; State ex rel. Dabney v. Breckenridge, supra, 126 Okl. 86, 258 P. 744, 53 A.L.R. 1239; Snyder's Case, 301 Pa. 276, 152 A. 33, 76 A.L.R. 666.

This Court has examined the application of the First Amendment to lawyers' criticism of judges and the judicial system in *In re Sawyer*, 360 U.S. 622 (1959). Sawyer represented a number of defendants who had been indicted and were being tried in the United States District Court for conspiracy under the Smith Act. Sawyer was charged with two counts of unethical conduct, one of which involved a public speech she made before a group of lay people. Sawyer spoke of the "horrible and shocking" things going on at the trial, the impossibility of a fair trial in a Smith Act Case, and the necessity of ignoring the rules of evidence if the government were to prove its case.

This Court held that Sawyer's speech could not subject her to discipline because it did *not* directly impugn the integrity and impartiality of the trial court but rather merely constituted permissible criticism of the Smith Act cases in general. Her references to the pending trial were deemed not to reflect on the trial judge personally nor his conduct of the trial. At page 635 of the majority opinion the Court stated:

> Even if some passages can be found which go so far as to imply that Judge Wiig was taking an erroneous view of the law . . . we think there was still nothing in the speech warranting the

> findings (that Sawyer had engaged in unethical conduct and should be disciplined). If Judge Wiig was said to be wrong on his law, it is no matter; appellate courts and law reviews say that of judges daily, and it imputes no disgrace. Dissenting opinions in our reports are apt to make petitioner's speech look like tame stuff indeed. *Petitioner did not say Judge Wiig was corrupt or venal or stupid or incompetent.* The public attribution of honest error to the judiciary is not cause for professional discipline in this country. See Re Ades (DC Md) 6 F Supp 467, 481. *In re Sawyer,* at 635. (Emphasis added)

Mr. Justice Stewart concurred with the majority's holding that the charge against Sawyer had not been proven but he went on to discuss the issue of free speech under the First Amendment:

> A lawyer belongs to a profession with inherited standards of propriety and honor, which experience has shown necessary in a calling dedicated to the accomplishment of justice. He who would follow the calling must conform to those standards.
>
> Obedience to ethical precepts may require abstention from what in other circumstances might be constitutionally protected speech. *In re Sawyer,* at 646-647.

The Kentucky Supreme Court in *Kentucky Bar Association v. Heleringer,* Ky., 602 S.W.2d 165 (1980), cert. denied, 449 U.S. 1101 (1981), relied on the holding in the *Sawyer* case when it held that a lawyer may criticize the state of the law, trials, or a judge's decision with impunity

because the expression of those opinions is constitutionally protected. However, pursuant to *Sawyer* a lawyer's comments cannot attack personally a particular court or judge and still be deemed protected speech. Here, Petitioner's comments were aimed directly at the judge who was not even in the case any longer. He was not criticizing the judge's decision or the law. Respondent stated that the judge was a "lying, incompetent ass-hole." Clearly this language constitutes a personal attack, is impermissible, and does not enjoy the protection of the First Amendment. The Kentucky Supreme Court, in *Heleringer,* relying on precedent, stated:

> Our system of justice rests upon the mutual regard of the Bench and Bar. *Matter of Frerichs,* 238 N.W. 2d 764-766 (1976). In the case of a lawyer an abuse of the right of free speech may be some index of his character or fitness to be a lawyer. *In re Lacey,* 283 N.W. 2d 250, 252 (1979) quoting *In re Gorsuch,* 76 S.D. 191, 75 N.W. 2d 644, 57 A.L.R. 2d 1355 (1956). Nor does free speech give a lawyer the right to openly denigrate the court in the eyes of the public. *In re Raggio,* 87 Nev. 369, 371, 387 P. 2d 499, 500 (1971). *Heleringer,* at 168.

It has been consistently held that only a compelling state interest in the regulation of a subject within the state's constitutional power to regulate can justify limiting First Amendment freedoms. *N.A.A.C.P. v. Button,* 371 U.S. 415 (1963). A lawyer's verbal abuse of a judge on a personal level leads to loss of public confidence in our system of justice. *Bradley v. Fisher,* 80 U.S. 335 (1872), *Kentucky State Bar Association v. Lewis,* supra, *Kentucky Bar Association v. Heleringer,* supra.

The state has a significant interest in maintaining the reputation and dignity of the courts and the legal profession. In balancing the competing interests at stake, it is generally recognized that the individual's interest is outweighed by the state's justifications for restricting the expression. As stated in Justice Stewart's concurring opinion in *Sawyer,* a lawyer cannot invoke the constitutional right of free speech to immunize himself from discipline for proven unethical conduct. *See,* Joan P. Vestrand, "The Ethical Boundaries of Civility", *Michigan Bar Journal* (February 1995) pp. 170-172.

The comments about the judge made by the Petitioner are unprotected speech in the form of a personal attack. Petitioner has never denied that he made the statements that the circuit judge was "a lying, incompetent ass-hole," in a legal memorandum styled "Legal Authorities Supporting the Motion to Dismiss." Respondent submits that Petitioner's irresponsible actions serve only to undermine public confidence in the integrity of the judicial process. The language also failed to accomplish his goal of having the motion to dismiss granted.

Respondent asserts that *Sawyer* is directly on point and supports the decision of the Board of Governors of the Kentucky Bar Association and the Opinion of the Supreme Court of Kentucky. The Respondent notes the Opinion of the Supreme Court of Kentucky cites and discusses *Sawyer.* Respondent is mindful of the first amendment right of a lawyer to criticize the state of the law or even to state that the judge has not properly applied the law in a particular case. Respondent is also aware that the Kentucky Constitution, as amended in

1976, provides for a state Retirement and Removal Commission which can consider alleged improper conduct by a member of the judiciary and take appropriate action against the judge in the public interest. The Petitioner failed to utilize the appropriate forum to register his protest against the rulings of a judge for whom he sought and received recusal. Instead Petitioner chose to attack the judge personally in scurrilous language in a legal document filed in open court.

There is no doubt in the present case that Petitioner publicly stated that a circuit judge was "a lying incompetent ass-hole." The Supreme Court of Kentucky specifically found that Petitioner's statement was unwarranted. Petitioner's speech was not only degrading to the judge, but is prejudicial to the administration of justice. Both the Supreme Court of Kentucky and the Board of Governors of the Kentucky Bar Association, after considering the record and the applicable case law, found that the Respondent's conduct violated the Kentucky Rules of Professional Conduct and disciplined him. The decision was just and fair. There are no justifiable reasons for granting the Writ of Certiorari.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A
RULES OF THE SUPREME COURT OF KENTUCKY

RULE 8.2 JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the code of judicial conduct.

Comment

(1) Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

(2) When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

(3) To maintain the fair and independent administration of justice, lawyers are encouraged to continue

traditional efforts to defend judges and courts unjustly criticized.

RULE 8.3 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) state or imply an ability to influence improperly a government agency or official; or

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Comment

(1) Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to

fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

(2) A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

(3) Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

RULE 8.4 JURISDICTION

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Comment

(1) In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is substantial and continuous, it may constitute practice of law in that jurisdiction. See Rule 5.5.

(2) If the rules of professional conduct in the two jurisdictions differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction.

(3) Where the lawyer is licensed to practice law in two jurisdictions which impose conflicting obligations, applicable rules of choice of law may govern the situation. A related problem arises with respect to practice before a federal tribunal, where the general authority of the states to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them.

SCR 3.140 APPOINTMENT OF INQUIRY TRIBUNAL

Annually, the Chief Justice shall appoint a former justice or former judge of the Court of Justice, a past-president of the Association, and a former chairman of the House to serve as members of an Inquiry Tribunal. One member shall be designated chairman and each shall possess the qualifications and appropriate powers of a circuit judge. The Tribunal may confer at such times as

may be necessary to promptly dispose of all complaints referred to it pursuant to Rule 3.170. [Amended effective January 1, 1978; April 1, 1982; September 15, 1990.]

SCR 3.150 PROCEEDINGS NOT PUBLIC; EXCEPTIONS*

(1) Subject to the following exceptions, nothing connected with a disciplinary case shall be made public unless so ordered by the Court:

(a) Upon request of the Retirement and Removal Commission, the Director shall make available to the Commission any of its records pertinent to an investigation by the Commission.

(b) Upon request of the Trustees of the Clients' Security Fund, the Director shall make available to the Trustees any records pertinent to the investigation of an application for relief under consideration by the Trustees and said records shall not be made public by the Trustees unless so ordered by the Court.

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* Publisher's Note: On April 27, 1981, the Supreme Court of Kentucky entered the following order: "Effective July 1, 1981, except for those proceedings in which this Court determines either that a private reprimand or no disciplinary action whatsoever is proper and which therefore must remain confidential, in such other matters considered by this Court under SCR 3.370 and SCR4.290 which by SCR 3.150 and SCR 4.120 are to be kept confidential until otherwise ordered by this Court, the entire record in the proceeding shall be considered public at such time as this Court's opinion becomes final under CR 76.30."

(c) An attorney against whom any complaint or charge is pending may elect to discuss his case with others to the extent he deems it appropriate consistent with the defense of his case and the practice of his profession.

(d) Upon a final adjudication of any complaint or charge brought against an attorney, the attorney may, if the complaint or charge has been fully dismissed, reveal this fact.

(2) The Inquiry Tribunal may refer the name of a member who has a complaint filed against him to the Association's Lawyers Helping Lawyers Committee for possible assistance to the member without reference to the source or subject matter of the complaint, provided such referral will not delay the disposition of the complaint under these Rules.

[Amended effective January 1, 1980; April 1, 1982; October 1, 1982; January 1, 1986; January 1, 1987.]

SCR 3.160 INITIATION OF DISCIPLINARY CASES

(1) Any complaint against an attorney for unprofessional conduct shall be reduced to a sworn written statement and shall be filed with the Director who shall promptly notify the attorney by certified mail of the complaint and inform him that he has fifteen days to acknowledge receipt of the complaint or respond to the merits.

(2) Notwithstanding the provisions of paragraph (1), when it comes to the attention of the tribunal from any source that an attorney may have engaged in

unprofessional conduct, the tribunal may initiate and conduct an investigation, and if it believes from its investigation that there is sufficient evidence to justify its filing a complaint against the attorney it may file such a complaint.

(3) Notwithstanding the provisions of paragraph (1), if the Director deems any written complaint against a member frivolous on its face, he may submit it to the chairman of the Inquiry Tribunal who may decline, without investigation, to entertain it and may authorize the Director to return the complaint to the complaining party with a letter of explanation.

(4) Neither the Kentucky Bar Association nor its officers, agents, delegates or members shall be liable to any member of the bar nor to any other person charged or investigated by said association, its officers, agents or delegates, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial.

[Amended effective January 1, 1978; July 1, 1979; January 13, 1986.]

SCR 3.165 TEMPORARY SUSPENSION BY THE SUPREME COURT

On petition of the Inquiry Tribunal, authorized by its Chair, and supported by an affidavit or certified copy of a judgment, an attorney may be temporarily suspended from the practice of law or placed on conditional probation by order of the Court provided:

A. It appears that reasonable cause exists to believe that an attorney is or has been misappropriating funds held for others to that attorney's own use or has been otherwise improperly dealing with said funds and reasonable cause exists to believe that unless such an order is issued, a real and present danger exists to the public.

Any such order of temporary probation or suspension which restricts the attorney in dealing with said funds shall, when served on any bank maintaining any account upon which said attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the Court, and shall direct such bank not to disclose (except to those entitled to withdraw from the account or accounts or to receive payment of such obligation, or upon the express written permission of at least one of such persons as to each such account or obligation) that such order has been received or the contents thereof. Any fees tendered to such attorney thereafter shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court. The Court may appoint a trustee to receive, transfer, or disburse any funds that are in the possession or are under the control of the attorney if the funds came into the attorney's possession from the attorney's clients or from third parties in the course of the practice of law. The Court may require the trustee to render an accounting of said funds to the Court and to furnish a copy of the accounting to the director; or

B. An attorney has been convicted of a Class A misdemeanor and it appears from the record of such

conviction that said attorney has so acted as to put in grave issue whether he or she has the moral fitness to continue to practice law; or

C. It appears that reasonable cause exists to believe that an attorney is mentally disabled or is addicted to intoxicants or drugs and reasonable cause exists to believe the attorney does not have the physical or mental fitness to continue to practice law. If the attorney denies a mental disability or denies an addiction to intoxicants or drugs, the Court may order the attorney to submit to a physical or mental examination by a physician appointed by the Court. The examining physician shall file with the Clerk of the Court a detailed written report setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. The clerk of the Court shall furnish a copy of the examining physician's entire report to the attorney and to the director. The Court may order the attorney to produce to the Court and to the director any relevant medical or psychiatric records evidencing prior or ongoing treatment for mental disability or addiction to drugs.

Upon receipt of a petition of the Inquiry Tribunal the Court shall issue an order against the attorney to show cause returnable within twenty days of the issuance of such order. The Court may impose temporary conditions of probation on said attorney or temporarily suspend said attorney or both.

The attorney may for good cause request dissolution or amendment of any such temporary order by petition filed with the Court, a copy of which will be served on

the director. The Court may refer such petition for dissolution to a person who possesses the qualifications of a trial commissioner under Rule 3.230 who shall act as a special commissioner for immediate hearing. The special commissioner shall hear such petition forthwith and submit his or her report and recommendations to the Court with utmost speed consistent with due process. Upon receipt of the foregoing report, the Court may modify its order if deemed appropriate until final disposition of all pending disciplinary charges against said attorney.

Within twenty (20) days from the date of the entry of the order of temporary suspension, the attorney shall notify all clients in writing of said attorney's inability to continue to represent them and shall furnish copies of all such letters of notice to the director.

[Adopted effective January 1, 1978, amended effective May 1, 1980; November 15, 1991; October 1, 1994.]

SCR 3.166 AUTOMATIC SUSPENSION AFTER CONVICTION OF A FELONY

(1) Any member of the Kentucky Bar Association who pleads guilty or is convicted by a judge or jury of a felony as defined in KRS 500.080 shall be automatically suspended from the practice of law in this Commonwealth. The suspension shall take effect automatically beginning on the day following the plea of guilty or finding of guilt by a judge or jury or upon the entry of judgment whichever occurs first. The suspension under this rule shall remain in effect until dissolved or superseded by order of the Court. Within thirty (30) days of the plea of guilty or finding of guilt by a judge or jury or

entry of judgment whichever occurs first, the suspended attorney may file a motion with the clerk of the Supreme Court of Kentucky setting forth any grounds which the attorney believes justify dissolution or modification of the suspension.

(2) The attorney prosecuting the case to a plea of guilty, conviction by judge or jury or entry of judgment, whichever occurs first, shall immediately notify the director of the Kentucky Bar Association and the clerk of the Supreme Court that such plea, finding or entry of judgment has been made.

(3) The suspended attorney shall serve a copy of any motion filed under paragraph (1) above on the Bar's counsel by mailing a copy to 514 West Main Street, Frankfort, Kentucky 40601. The Bar's counsel shall file a response to the suspended attorney's motion within twenty (20) days of receipt of the motion.

(4) Any attorney suspended under this rule shall notify all clients in writing of the attorney's inability to continue to represent them and shall furnish copies of all such letters to the Director. These letters shall be mailed to the client within ten (10) days after the plea of guilty, conviction by judge or jury, or entry of judgment has been made. The attorney shall make arrangements to return all active files to the client or new counsel and shall return all unearned attorney fees and client property to the client and shall advise the director of such arrangements within the same ten (10) day period.

(5) Disciplinary proceedings against such attorney shall be initiated by the Inquiry Tribunal pursuant to SCR

3.160, unless already begun or unless the suspended attorney resigns under terms of disbarment.

[Adopted effective October 1, 1994.]

SCR 3.170 PROCESSING DISCIPLINARY CASES

Upon the expiration of fifteen days, or receipt of response, the Director shall refer the matter together with such investigative evidence as may have been obtained, to the Tribunal to determine whether the complaint should be dismissed or file a charge.

SCR 3.180 INVESTIGATIONS AND TRIALS TO BE PROMPT; SUBPOENA POWER

(1) All investigations and the trial of all disciplinary cases shall be begun, prosecuted and completed as promptly as the ends of justice will permit. Neither the unwillingness of the complainant to prosecute, nor an offer of settlement, compromise or restitution shall delay the investigation, trial or report to the Board.

(2) Proceedings may be deferred by the Tribunal if there is pending civil or criminal litigation directly involving the Respondent or proposed Respondent involving substantially similar material allegations to that or those in the disciplinary proceedings, provided, however, that the respondent-attorney proceeds with reasonable dispatch to insure the prompt disposition of the pending litigation.

(3) Upon application of the Director to the Tribunal and after a hearing of which respondent is given at least five days' notice, for good cause shown the Tribunal may

authorize the Director to issue a subpoena to a respondent, or any other person or legal entity to produce to the Director any evidence deemed by the Tribunal to be material to the investigation of a complaint. The person or entity so subpoenaed will not divulge, except to his own attorney, that such a subpoena has been served nor what evidence is sought or obtained. The respondent may be present at the time the evidence or material is examined or obtained by the Director and will be furnished copies of all documents obtained.

[Amended effective January 1, 1978; April 1, 1982.]

SCR 3.185 INFORMAL ADMONITORY PROCEDURE

After a complaint against an attorney for unprofessional conduct is investigated and a response filed, the Tribunal may direct a private admonition to the attorney where the acts or course of conduct complained of are shown to be of a minor ethical or technical nature. The attorney so admonished may, within 20 days from the date of the admonition, answer and request that the complaint be treated as if a charge had been filed against him as is provided by Rule 3.190; whereupon the issues shall be processed under the applicable rules.

[Adopted effective June 14, 1972; amended effective January 1, 1978.]

SCR 3.190 CHARGES; FORM; BY WHOM AND WHERE FILED

If the Tribunal determines, by a majority vote, that a charge should be filed, it shall prepare such charge stating the name and present, or last known, address of the attorney and facts alleged to constitute unprofessional conduct. The charge shall be signed by a member of the Tribunal and filed in the office of the Director.

SCR 3.200 NOTICE OF FILING CHARGES; TIME TO ANSWER

Upon the filing of a charge, the Director shall furnish the respondent with a copy by certified mail, return receipt requested, to his last known address, and if none is known subsequent thereto, to his last known bar roster address, and notify him that he must within twenty (20) days after receipt of the notice file his answer and three (3) copies with the Director for transmittal to the Inquiry Tribunal.

[Amended effective January 1, 1978.]

SCR 3.210 PROCESSING CASES OF DEFAULT, PLEAS OF GUILT OR ANSWERS RAISING ONLY ISSUES OF LAW

(1) If no answer is filed after a Respondent is notified, or an answer is filed admitting the charge, or, the answer raises only issues of law, the Tribunal shall order the record, together with such investigative evidence as may have been obtained to be submitted to the Board. If the answer raises issues of law, the Chairman of the House shall be notified by the Tribunal and he shall

appoint counsel for the Association to file a brief within twenty days and the Respondent may file a brief within twenty days thereafter. After briefs are filed, or the time within which briefs may be filed has expired, the record and briefs shall be forwarded to the President for assignment to a member of the Board for a report.

(2) The Board, by a vote of a majority of the Board present and voting, may remand the entire record to the Chairman of the House of Delegates for an evidentiary hearing on points specified in the Order of Remand. Upon such remand, the Chairman shall follow the procedure which appoints a trial commissioner as provided in Rule 3.230 et seq.

[Amended effective January 1, 1978.]

SCR 3.220 WHEN CHARGE SHALL NOT BE TAKEN AS CONFESSED

No charge against a respondent shall be taken as confessed when the respondent shall have been constructively summoned under Rule 3.270, unless the report of the respondent's appointed counsel states that he has caused the respondent to be notified of the nature and pendency of the charge.

[Amended effective January 1, 1978.]

SCR 3.230 PROCEDURE WHEN ANSWER RAISES ISSUES OF FACT

If the answer raises any issue of fact, the Inquiry Tribunal shall notify the Chairman of the House in order

that he may appoint an attorney to represent the Association, and appoint a member of the House to act as Trial Commissioner who will be so commissioned by the Chief Justice. The Trial Commissioner shall have been admitted to practice law for a minimum of five (5) years and shall reside in a different Supreme Court District from that of the respondent. The Director shall immediately notify the Trial Commissioner of his appointment and provide him with a copy of the pleadings.

[Amended effective January 1, 1978; January 1, 1987.]

SCR 3.240 NOTICE OF APPOINTMENT OF TRIAL COMMISSIONER AND HEARING

(1) Upon the appointment of a Trial Commissioner the Director shall notify the parties of his name and address. The Trial Commissioner shall fix the time and place of the hearing and the Director shall give notice thereof to the parties. Such hearing shall be not less than twenty (20) days after the date of the notice.

(2) The Trial Commissioner may convene a pretrial conference which shall demand the appearance of counsel representing the respective parties.

[Amended effective January 1, 1978.]

SCR 3.250 CHALLENGE TO QUALIFICATIONS OF TRIAL COMMISSIONER

Any time, not later than ten (10) days before the date set for hearing the respondent may, by motion, challenge for cause the Trial Commissioner. If the challenge is such as might disqualify a circuit judge, the Chairman of the

House shall relieve the challenged member and immediately fill the vacancy.

[Amended effective January 1, 1978.]

SCR 3.260 JOINDER AND CONSOLIDATION

(1) Any number of acts or omissions, and any number of separate and distinct transactions, alleged to constitute unprofessional conduct on the part of an attorney may be alleged in a single charge in separate counts. Separate charges may, by order of the Tribunal be consolidated and tried as a single disciplinary case.

(2) A charge may be filed against two or more attorneys if based on the same or related state of facts and separate charges against two or more attorneys based upon the same or related state of facts may, by order of the Tribunal, be consolidated and tried as a single disciplinary proceeding. Where two or more attorneys are proceeded against in the same proceeding the Trial Commissioner shall make a separate report to the Board as to each.

[Amended effective January 1, 1978.]

SCR 3.270 ABSENT RESPONDENTS; APPOINTMENT OF ATTORNEY

If the copy of the charge and notification, mailed to the respondent as required by Rule 3.200, is undelivered and returned to the Director, the Chairman shall, by order, appoint an attorney for the respondent. The Director shall furnish such attorney copies of the order appointing him to represent the respondent, the charge,

and the notification. It shall be the duty of an attorney so appointed to exercise reasonable diligence to notify the respondent personally or by mail of the nature and pendency of the charge against him. Not less than thirty days nor more than fifty days after his appointment, the attorney appointed for the respondent shall file a report stating what efforts he has made to locate and notify the respondent and whether the respondent has been apprised of the charge. If the report of the appointed attorney states that he has caused the respondent to be notified of the nature and pendency of the charge, no further duty shall be required of the attorney. If the report does not so state, it shall be the further duty of the appointed attorney to attend the hearing before the Trial Commissioner and thereat to represent the respondent, however, he shall not be required to make a factual investigation of the charge. A respondent for whom an attorney is appointed, as herein provided, shall be deemed to have been constructively summoned on the thirtieth day after the date of the order appointing his attorney. He may file an answer within twenty days after the date on which he shall have been deemed to have been constructively summoned.

[Amended effective January 1, 1978.]

SCR 3.280 PLEADINGS AND PRELIMINARY MOTIONS

There shall be a charge and answer and, when permitted by the Trial Commissioner, a reply and such amendments to pleadings as may be required to serve the ends of justice. Averments in an answer or a response

shall be taken as denied or avoided. No preliminary motions may be filed except:

(a) For a more definite statement of the charge or answer.

(b) Challenging the qualifications of the Trial Committee as provided by Rule 3.250.

[Amended effective January 1, 1978.]

SCR 3.328 MOTION TO RECONSIDER OR DISMISS A CHARGE

Prior to the evidentiary hearing before the Trial Commissioner, either the Respondent or counsel for the Association may file a motion with the Inquiry Tribunal to reconsider or dismiss a charge. The motion shall be verified and shall state specifically the reasons why the matter should be reconsidered or dismissed and may be accompanied by supporting affidavits and exhibits, if any. the motion shall be filed in the office of the Director under Rule 3.290. Upon such reconsideration, the Inquiry Tribunal may dismiss a charge it has previously issued, amend a charge, withdraw a charge and instead issue a private admonishment under Rule 3.185, or deny the motion and direct the Trial Commissioner to proceed with the hearing.

[Adopted effective January 1, 1988.]

SCR 3.290 FILING AND PROCESSING OF PLEADINGS AND OTHER PAPERS

Promptly after a charge is filed all further pleadings, notices, motions, orders, and briefs shall be sent to the

Director, who shall file the original and forward one copy to the Trial Commissioner and counsel of record. All other reports, inquiries, letters, letters of transmittal, and other communications shall be sent to, and processed by the Director. No such paper or copy thereof shall be sent by, or on behalf of any party to the Court, the Board, the Trial Commissioner, Tribunal, or any member thereof.

[Amended effective January 1, 1978.]

SCR 3.300 RIGHTS OF RESPONDENT AGAINST WHOM A CHARGE HAS BEEN FILED

The respondent against whom a charge has been filed shall have the right to be represented by counsel. If the Tribunal finds the answer to the charge raises issues of fact, the respondent shall be entitled to a hearing before a Trial Commissioner. He shall have all the rights secured to a party by the Rules of Civil Procedure with respect to the introduction of evidence, the right to compel the attendance of witnesses; and the production of books, papers and documents or other writings except those contained in the investigative file of the association. He shall have the right to an oral argument or to file a brief before the Trial Commissioner. He shall be afforded a full opportunity to remain silent, to defend himself by the introduction of evidence and to cross-examine witnesses called against him. If the respondent be unable to employ counsel, the Chairman, upon written request in affidavit form, made within twenty days after service of the charges, shall appoint counsel for the respondent.

[Amended effective January 1, 1978; April 1, 1982.]

SCR 3.320 PROCEDURE WHERE AN ATTORNEY HAS BEEN CONVICTED OF A MISDEMEANOR OR A FELONY

When any member of the Association has been convicted of a felony or class "A" misdemeanor a copy of the judgment shall be filed with the Director for action under Rule 3.160. The Director shall submit copies of the judgment to the Tribunal who may take action under Rule 3.165.

[Amended effective January 1, 1978.]

SCR 3.330 ORDER OF PROCEEDINGS AND BURDEN OF PROOF

The Trial Commissioner shall determine and regulate the order of proceedings at the hearing. Upon the application of a party or upon direction of the Trial Commissioner the Director shall issue subpoenas for the attendance of witnesses or the production of evidence. The burden of proof shall rest upon the Association in a disciplinary proceeding and the facts must be proven by substantial evidence. In reinstatement hearings the burden shall rest upon the applicant. Before submission the Trial Commissioner may direct such oral argument as it deems appropriate and receive briefs from all parties on such terms as it may impose.

[Amended effective January 1, 1978; April 1, 1982.]

SCR 3.340 INTRODUCTION AND ADMISSIBILITY OF EVIDENCE, EVIDENCE TAKEN IN OTHER PROCEEDINGS

The testimony at all hearings shall be in person, except that the parties may use depositions under the same standards as those prescribed by the Kentucky Rules of Civil Procedure. The rules of evidence applicable in civil actions shall apply.

Where, in any proceeding, evidence has been taken under oath upon due notice to the Respondent, and at the taking of which Respondent has appeared, either in person or by counsel, or as attorney for any party, a duly certified transcript of all, or the essential portions, of such proceedings may be used as evidence in any hearing or in any investigation antecedent to or in connection with any disciplinary case involving the same charge or any charge growing out of matters connected therewith, and such transcript and record, or parts thereof, may be made a part of the record on any hearing or investigation.

SCR 3.350 TRANSCRIPT OF EVIDENCE

The proceedings before the Trial Commissioner shall be reported by as reporter appointed by the Trial Commissioner.

[Amended effective January 1, 1978.]

SCR 3.360 TRIAL COMMISSIONER TO FILE REPORT WITH BOARD

(1) When a disciplinary proceeding has been finally submitted, the Trial Commissioner shall promptly file

with the Board within thirty (30) days after the transcript of evidence is filed by the reporter with the Director, the entire transcript of the proceeding, the transcript of testimony together with such papers as may have been filed, and a written report in the nature of findings of fact relating to guilt or innocence, which shall contain a concise statement of:

(a) the charges made against the defense offered by the respondent;

(b) the proceedings had;

(c) the facts which the Commissioner deems proved by substantial evidence.

The Trial Commissioner's report shall constitute a part of the record in the case. The report shall be advisory.

(2) The Trial Commissioner shall file his report with the Board within thirty (30) days after the transcript of evidence has been filed by the court reporter with the Director, or shall file a verified motion for an extension of time with the Chairman of the House of Delegates, with service on the parties, stating with particularity the grounds therefor. The Chairman may grant up to a sixty (60) days extension of time for the Trial Commissioner to file his report. If the Trial Commissioner fails to timely file the report or a verified motion for extension of time, the Chairman shall request the Supreme Court to issue a show cause order to the Trial Commissioner.

(3) Within forty (40) days after the filing of the report with the Director, each party shall file a brief

simultaneously with the Director and no reply briefs shall be permitted.

Upon receipt of the transcript and the Trial Commissioner's report, and the expiration of the forty (40) days briefing time, the matter shall be scheduled for consideration by the Board. Oral argument shall be had before the Board by request filed with the Director by any party no less than twenty (20) days prior to the scheduled consideration of the matter by the Board, or may be scheduled by the Board on its own motion.

[Amended effective January 1, 1978; January 1, 1987; August 28, 1989.]

SCR 3.370 BOARD'S ACTION ON TRIAL COMMISSIONER'S REPORT AND PROCEDURE IN THE COURT

(1) Upon receipt of the report of the Trial Commissioner, the Board shall promptly consider and act upon the entire record. Only the President, the President-Elect, the Vice-President and the fourteen duly elected members of the Board from their respective Supreme Court districts shall be eligible to be present, participate in, and vote on any disciplinary case. Any member who has participated in any phase of a disciplinary case submitted to the Board under this Rule, or has been challenged on grounds sufficient to disqualify a circuit judge shall be disqualified; and the Chief Justice shall appoint a member to consider and act on the case.

(2) Nine of those qualified to sit in a disciplinary matter must be present to constitute a quorum for consideration of such matters.

(3) The Board shall decide, by a roll call vote, whether the respondent is guilty or not guilty. If the respondent be found guilty, the Board shall then decide, by a roll call vote, the disciplinary action. Both the findings and any disciplinary action must be agreed upon by 9 or 3/4 of members of the Board present and voting in the proceedings, whichever is less. The result of each of the two votes shall be recorded in the Board's minutes and in a written decision of the Board giving its findings of fact and conclusions of law and reasons therefor as stated in paragraph (4) to this Rule. The President shall sign and file with the Director an order setting forth the action and decision of the Board, and the Director shall mail copies of such order and decision, together with a copy of the Trial Commissioner's report, to the respondent and his counsel and to each member of the Tribunal. The Board, by a vote of a majority of the Board present and voting, may remand the case to the Trial Commissioner for clarification of the Trial Commissioner's report or for an evidentiary hearing on points specified in the order of remand. The Board may order the parties to file additional briefs on specific issues.

(4) The Board will, in its decision, state wherein it differs with the findings of fact of the Trial Commissioner, and will state the degree of discipline, if any.

(5) The entire record, together with a certified bill for costs and expenses incurred in the investigation preliminary to, and in the conduct of, the proceedings, shall be filed with the Clerk by the Director.

(6) The respondent may file a notice for the Court to review the Board's decision within thirty (30) days after

the Board's decision is filed with the Clerk stating reasons for review accompanied by a brief supporting his position on the merits of the case. The Director may file a brief within thirty (30) days thereafter in support of the Board's decision. Before the notice for review can be filed, the respondent shall furnish a bond with surety acceptable to the Clerk, conditioned that if the principal in the bond be disciplined by the Court, he will promptly pay all costs incurred in the proceeding including those certified under Rule 3.370. If he files his response in forma pauperis, no bond shall be required.

(7) If the respondent files a notice for the Court to review the Board's decision, the matter will stand submitted to the Court when the Director files a Response or the time for Response has expired. Otherwise, the matter will stand submitted upon expiration of the time limit in which one may file a notice for the Court to review.

(8) The Court may within sixty (60) days of the matter being submitted notify both the Director and respondent that it will review the Board's decision. If the Court so acts, the Director and respondent may each file briefs within forty (40) days with no right to file reply briefs unless by order of the Court whereupon the case shall stand submitted. Thereafter, the Court shall enter such orders or opinion as it deems appropriate on the entire record.

(9) If the respondent does not file a notice of review or the Court does not notify the parties of its review under paragraph (8) of this Rule, the Court shall enter an order adopting the decision of the Board relating to all matters.

(10) When the respondent is proceeded against by warning order, the notice in paragraph (3) and paragraph (8) of this Rule shall be deemed to have been served thirty (30) days after the date of the making of the warning order.

(11) In each case to be presented to the Board there shall be supplied with the Director's file a sealed envelope containing a statement of all orders of unprofessional conduct, years of membership in the association, and withdrawals from the association and reasons therefor, of the respondent. Same will be opened only if the Board votes to recommend a finding of guilty, and may be considered in deciding what discipline to recommend. Such statement will become part of the record of the case and be transmitted with the rest of the file to the Supreme Court. Prior to the submission of a case to the Board a copy of said statement will be sent to the respondent, who may review documents relative to it at the Bar Center and may comment upon and point out errors contained in the statement.

[Amended effective January 1, 1978; July 1, 1979; April 1, 1982; January 1, 1987; August 28, 1989; September 15, 1990.]

SCR 3.380 DEGREES OF DISCIPLINE

Upon findings of guilt or unprofessional conduct, discipline may be administered by way of admonition, private reprimand, public reprimand, suspension from practice, or disbarment. If a private reprimand is issued, it shall not be made public and shall be transmitted only to the respondent, or his attorney, and to the attorney for

the complainant, and the record shall be sealed, subject to reopening only on order of the Court.

[Amended effective January 1, 1978; April 1, 1982.]

SCR 3.390 NOTICE TO CLIENT OF SUSPENSION OR DISBARMENT

There shall be contained in every opinion or order imposing disbarment or a suspension of more than two (2) months a direction that such suspended or disbarred attorney notify all courts in which he has matters pending and all clients for whom he is actively involved in litigation and similar legal matters of his inability to continue to represent them, and of the necessity and urgency of promptly retaining new counsel. Such notification shall be by letter duly placed in the United States mail within ten (10) days of the date the order of suspension or disbarment becomes effective, and such suspended or disbarred attorney shall simultaneously provide a copy of all such letters to the Director of the Association.

Failure to do so shall subject the respondent to a charge of contempt of Court.

[Amended effective January 1, 1978; April 1, 1982; January 1, 1987.]